

PDC Interpretation

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SEE ALSO: Servicemembers' Civil Relief Act (SCRA), 50 USC App. Secs. 501-593
Chapter 42.17 RCW
Title 390 WAC
State SCRA, Chapter 38.42 RCW

Servicemembers' Civil Relief Acts and PDC Filings

Background:

Federal

The federal Servicemembers' Civil Relief Act (SCRA) is a longstanding federal law (first passed as the Soldiers and Sailors Civil Relief Act during World War I) that protects members of the armed forces from various legal obligations while engaged in active duty. The old statute was recently amended, renamed the Servicemembers Civil Relief Act (SCRA) and signed into law on December 19, 2003. The current statute appears at 50 United States Code Appendix Sections 501-593. A complete copy of the statute can be found on the Washington State Courts website as well at <http://www.courts.wa.gov/newsinfo/ssra/>. The SCRA designed to protect active duty military members and active reservists and active National Guard members. The SCRA applies to states and political subdivisions.

The SCRA does not explicitly address a service member's obligation to file with the Washington State Public Disclosure Commission. But the SCRA does allow a qualifying service member relief from "any obligation or liability" incurred during a period of active duty. While this appears to apply primarily to tax and other similar financial obligations, the PDC has determined an analogy can be made to the obligation to file required paperwork with the PDC, particularly as they may relate to or result in financial penalties, liabilities and consequences result from late or missed filings. Using the SCRA as a basis for considering late PDC filings by qualifying service members is within the SCRA's applicability "to any judicial proceeding commenced in any court or agency in any jurisdiction subject to this Act." 50 USC App. Sec. 512. Additionally, Congress has declared the SCRA is to be interpreted very liberally.

The SCRA also allows qualifying service members to obtain a stay from a court of any legal proceedings against them and to reopen a default judgment entered against them if the service member failed to respond to a lawsuit while on active duty.

State

In 2005, the State Legislature also enacted a Washington Service Members' Civil Relief Act. Chapter 38.42 RCW. The state SCRA applies to "any service member who is ordered to report for military service and his or her dependents." RCW 38.42.020. Except for criminal proceedings, the state SCRA applies to any judicial or administrative proceeding in which a service member or dependent is a defendant. The state SCRA is to be construed liberally "to do justice to service members and their dependents." RCW 38.42.020.

Qualifying service members and dependents are entitled to a stay of proceedings if the criteria of RCW 38.42.060 are met for members and dependents who receive actual notice of the proceeding. Qualifying service members and dependents may seek the non-entry of or protection from default judgments if the criteria of RCW 38.42.050 are met. The period of a service member's service is not computed in any statute of limitations. RCW 38.42.090. A service member may waive his or her rights under the chapter. RCW 38.42.040.

A copy of the state SCRA is available on the Washington State Code Reviser's website on Access Washington at: <http://apps.leg.wa.gov/rcw/supplementallegacy.aspx>.

Federal SCRA Criteria:

1. Active Duty.

The SCRA applies to service members on "active duty." Active duty is defined as full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. 10 USC Sec. 101(d)(1). Active status includes active members of reserve components including active Army or Air National Guard members. Active reservist means full time duty in the reserve components or in the National Guard. 10 USC Sec. 101(d)(3)-(5). Service of less than 30 days is not "active service." 10 USC Sec. 101(d)(2). Protections under the SCRA for active reserve and Guard members begin on the date of receipt of the order for military service. 50 USC App. Sec. 516.

2. Materially Affected.

Under the SCRA if a qualified active service member is "materially affected" by reason of military service from complying with a court judgment or order, the court may on its own motion or shall on application of a service member stay the execution of any

judgment or order entered against the service member before or during the service period and or within 90 days of termination of the service. 50 USC App. Sec. 524. The definition of “court” in the SCRA consistently includes administrative agencies. Qualifying service under the SCRA also tolls a statute of limitation and the service period “shall not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department or other agency of a state” 50 USC App. Sec. 526.

If the service member’s ability to satisfy an obligation is “materially affected” by the military service a court can grant various types of relief such as staying the obligation during the period of service and beyond. During the stay period no fines or penalties connected with the obligation are to accrue. 50 USC App. Sec. 591. In all instances the burden is on the service member to show qualifying service and to show that the service materially affects the service member’s ability to appear or otherwise satisfy the particular obligation. There is no definition in the SCRA of the term “materially affected.” Thus, it will be determined on a case-by-case basis.

State SCRA Criteria:

1. Qualifying Persons. (RCW 38.42.010, .020)

A service member who is ordered to report for military service or his or her dependents may qualify for relief under the state SCRA.

- A “service member” is a resident of Washington state who is a member of the national guard or member of a military reserve component.
- “Military service” means a service member under a call to active service authorized by the president of the United States or the secretary of defense for a period of more than 30 days.
- “National guard” is defined in RCW 38.04.010.
- “Dependent” means a service member’s spouse, minor child, or person for whom the service member provided more than one-half of the individual’s support for 180 days immediately preceding relief under the SCRA.

2. Time Period. (RCW 38.42.020)

The time period for which a service member may seek relief is during the period beginning on the date on which the service member receives the order and ending 180 days after termination or release from military service.

3. Stay of Proceedings. (RCW 38.42.060)

A qualifying service member or dependent may seek a stay if he or she is in military service, or it is within 180 days after termination of or release from military service, and if the criteria of RCW 38.42.060 are met. Those criteria include:

- Providing a communication setting forth facts showing that the current military duty “materially affects” the service member’s or dependent’s ability to appear and stating a date upon which the member or dependent will be available to appear; or,
- Providing a letter or other communication from the commanding officer stating that the service member’s current military duty prevents either the member’s or dependent’s appearance, and that military leave is not authorized.

4. Default Judgment (RCW 38.42.050).

A qualifying service member or dependent may seek the non-entry of or relief from a default judgment if the criteria of RCW 38.42.050 are met.

PDC Policy/Interpretation:

Federal SCRA

If a member of the active military seeks relief from PDC filing deadlines occurring during active duty, or penalties imposed during active duty, the service member (or an attorney or other authorized representative) must establish the following:

- That he or she was on “**active duty**” for the time in question.
- That the qualifying service “**materially affects or materially affected**” the ability to timely complete the filing or to have appeared before the PDC in a timely manner to request a modification or other relief.
- That he or she has **specified the relief requested** – such as an extension of time to file the report, waiver of penalties associated with late or missed filing, or that they have obtained from a court a stay of reporting requirements or other relief as desired.
- That he or she has specified the **time period for the relief sought** – at least during the period of service, and in the case of reservists, starting from the date of receipt of orders.
- That he or she has **timely sought relief**. The SCRA generally allows application for relief during the period of service and up to 180 days beyond.

State SCRA

If a service member or dependent is a defendant who seeks a stay or relief from a default judgment from the PDC under the state SCRA, the service member or dependent (or an attorney or other authorized representative, or commanding officer) must submit a letter or other communication to the PDC and establish the following:

- That he or she is a **qualifying service member or dependent**;
- That he or she seeks a **stay or non-entry/relief from a default judgment**.
- That he or she **satisfies the criteria** for the relief sought, including if the service **materially affected** the person's ability to participate in the PDC proceedings **or that leave is not authorized** to enable participation.
- That he or she **identifies the time period** for which relief is sought.
- That he or she **timely sought the relief**.

The Commission will provide a stay upon its own motion if information is provided to it that the stay criteria are satisfied. The Commission may provide other relief.